

## **MEMORANDUM**

**SUBJECT:** Final Guidance on the Award of Grants to Indian Tribes Under Section 106 of the Clean Water Act for FY 2000 and Future Years

**FROM:** Michael B. Cook, Director /S/  
Office of Wastewater Management

**TO:** Water Management Division Directors  
Regions I-II, IV-X

The attached guidance document provides EPA Regions with policy and procedures for award and oversight of assistance grants to Indian Tribes under Section 106 of the Clean Water Act for Fiscal Year 2000 and future years. This guidance supersedes the previously issued guidance of June 20, 1995.

In accordance with 40 CFR 35.150 Evaluation of Recipient Performance, each Region will oversee the performance of Tribes under Section 106 grant agreements. Regional project officers will: (1) evaluate each recipient's performance and progress toward completing the commitments in the negotiated work plan in accordance with the work plan schedule; (2) provide the findings of the evaluation to each grant recipient; and (3) include the findings in each grant recipient's file.

If you have any questions regarding this guidance, please call me or contact Clarence Braddock, the Headquarters Section 106 Tribal Grant Coordinator at (202) 260-5828.

Attachment

cc: Regional Water Quality Branch Chiefs  
Regional Section 106 Indian Coordinators



**JULY 1999**

---

**FINAL GUIDANCE**

**ON**

**AWARD OF GRANTS TO INDIAN TRIBES**

**UNDER SECTION 106 OF THE CLEAN WATER ACT**

**FOR FISCAL YEAR 2000 AND FUTURE YEARS**

---

**Office of Water**  
**Office Of Wastewater Management**  
**Resources Management and Evaluation Staff**

# **GUIDANCE FOR THE SECTION 106 TRIBAL GRANT PROGRAM**

## **TABLE OF CONTENTS**

	<b><u>Page</u></b>
<b><u>OVERVIEW</u></b> .....	1
<b>PURPOSE</b> .....	1
<b>SECTION 106 TRIBAL GRANT PROGRAM</b> .....	1
<b>GOVERNMENT PERFORMANCE AND RESULTS ACT (GPRA)</b> .....	2
<b>WATER PROGRAM INDIAN STRATEGY</b> .....	2
<b>OTHER DOCUMENTS</b> .....	4
<b>DEFINITION OF TERMS</b> .....	4
<b><u>SECTION 1: GRANT PROGRAM ELIGIBILITY</u></b> .....	6
<b>ELIGIBILITY REQUIREMENTS FOR TRIBES</b> .....	6
<b>ELIGIBILITY REQUIREMENTS FOR INTERTRIBAL CONSORTIUM</b> .....	6
<b>ELIGIBILITY DETERMINATIONS</b> .....	7
<b>PURPOSE OF ELIGIBILITY DETERMINATIONS</b> .....	8
<b>DOCUMENTATION TO SUPPORT ELIGIBILITY DETERMINATIONS</b> .....	8
<b>PUBLIC PARTICIPATION IN ELIGIBILITY DETERMINATIONS</b> .....	9
<b><u>SECTION 2: GRANT PROGRAM FUNDING</u></b> .....	10
<b>HOW FUNDS ARE APPROPRIATED</b> .....	10
<b>TRIBAL ALLOTMENT FORMULA</b> .....	10
<b><u>SECTION 3: ELIGIBLE USES OF GRANT FUNDS</u></b> .....	11
<b>WATER POLLUTION CONTROL ACTIVITIES</b> .....	11
<b>CLEAN WATER ACTION PLAN(CWAP)</b> .....	11

UNIFIED WATERSHED ASSESSMENTS(UWA).....	12
GENERAL ASSISTANCE PROGRAM(GAP) GRANTS.....	13
PERFORMANCE PARTNERSHIP GRANTS(PPG).....	13
<b><u>SECTION 4: GRANT PROGRAM AWARDS</u></b> .....	14
MAXIMUM FEDERAL SHARE.....	14
SECTION 106 GRANT APPLICATIONS.....	14
PERFORMANCE PARTNERSHIP GRANT APPLICATIONS.....	15
GRANT WORK PLANS.....	15
GRANT PERFORMANCE EVALUATIONS.....	16
GRANT REPORTING.....	16
GRANT LIMITATIONS.....	17
GRANT EXCEPTIONS.....	18
<b><u>SECTION 5: GRANT PROGRAM PRIORITIES</u></b> .....	19
WATER QUALITY MONITORING.....	19
WATER QUALITY STANDARDS.....	21
NATIONAL POLLUTANT DISCHARGE.....	23
ELIMINATION SYSTEM (NPDES)	
ENFORCEMENT AND COMPLIANCE ASSURANCE.....	26

## **APPENDICES**

APPENDIX A	PROTECTING PUBLIC HEALTH AND WATER RESOURCES IN INDIAN COUNTRY, A STRATEGY FOR EPA/TRIBAL PARTNERSHIP.
APPENDIX B	ESTABLISHING AND MAINTAINING ADMINISTRATIVE RECORDS FOR EPA DETERMINATIONS ON TRIBAL ELIGIBILITY FOR REGULATORY PROGRAMS.
APPENDIX C	FINAL FRAMEWORK FOR UNIFIED WATERSHED ASSESSMENTS, RESTORATION PRIORITIES, AND RESTORATION ACTION STRATEGIES

<b>APPENDIX D</b>	<b>INTERIM GUIDANCE ON COST SHARING/MATCH REQUIREMENTS FOR TRIBAL SECTION 106 GRANTS</b>
<b>APPENDIX E</b>	<b>NPDES AND SEWAGE SLUDGE PROGRAM AUTHORITY</b>
<b>APPENDIX F</b>	<b>OECA FINAL FY 2000/2001 MEMORANDUM OF AGREEMENT GUIDANCE</b>

## **OVERVIEW**

### **WHAT IS THE PURPOSE OF THIS GUIDANCE?**

This guidance provides EPA Regions with a framework of the operating procedures and guidelines for awarding and administering environmental program grants to federally recognized Indian Tribes under the authority of Section 106 of the Clean Water Act (CWA), for Fiscal Year 2000 and future years. This guidance supersedes the previously issued guidance of June 20, 1995.<sup>1 2</sup> This guidance provides the basis for negotiations with our tribal partners who play a vital role in protecting and restoring the Nation's waters. This guidance should be shared with these partners. This guidance addresses key elements of the CWA Section 106 Tribal Grant Program— program priorities, eligibilities, funding allocations, cost-sharing, performance evaluation, and progress reporting.

### **WHAT IS THE CWA SECTION 106 TRIBAL GRANT PROGRAM?**

Section 106 of the Clean Water Act(CWA) authorizes annual appropriations of funds for federal grants to assist state and interstate agencies in administering water pollution control programs. Section 518(e) of the CWA authorizes EPA to treat a federally recognized Indian Tribe as a State for the purposes of receiving funding under Section 106. A portion of the total section 106 appropriation is set-aside to fund Tribal water pollution control programs. The Section 106 set-aside funds are allocated to the EPA Regions in accordance with the Section 106 allotment formula adopted in Fiscal Year 1998. Unlike states and interstate agencies, individual Tribes do not receive allotments directly from EPA. Each Region has the discretion to make Section 106 grant awards to eligible Tribes, as it believes appropriate, consistent with statutory limitations, Agency regulations, and this guidance. Tribes are encouraged to organize their grant work plans around environmental program goals and objectives to assist EPA in complying with requirements of the Government Performance and Results Act of 1993 (GPRA), Public Law 103-62.

---

<sup>1</sup> This guidance should be used in conjunction with: the EPA Policy for the Administration of Environmental Programs on Indian Reservations, November 8, 1984; the Administrator's Policy on Performance Based Assistance, May 11, 1985; the Annual Office of Water Operating Guidance; 40 CFR Part 31, General Grant Regulation; 40 CFR Part 35, Subpart B, Indian Tribes Environmental Program Grants; 40 CFR Part 130, Water Quality Planning and Management Regulations; and the new "Treatment in the Same Manner As-a-State Simplification Rule" published in the Federal Register, Vol. 59, No. 13814 (3/23/94) and Vol. 59, No. 239 (12/14/94)

<sup>2</sup> The Administrator's Tribal Operations Action Memorandum, July 12, 1994 and the Section 106 Surface Water Grant Guidance, March 31, 1994 remain in effect.

## **WHAT IS THE GOVERNMENT PERFORMANCE AND RESULTS ACT (GPRA)?**

The Government Performance and Results Act (GPRA) is the primary legislative framework through federal agencies will be required to set strategic goals, measure performance, and report on the degree to which goals were met. The GPRA required each federal agency to develop, no later than the end of fiscal year 1997, strategic plans to cover a period of at least 5 years and include the agency's mission statement; identify the agency's long term strategic goals; and describe how the agency intends to achieve those goals. Under GPRA , agency strategic plans are the starting point for agencies to set annual goals for programs and to measure the performance of the programs in achieving those goals. GPRA requires each agency to submit to the Office of Management and Budget (OMB), beginning for fiscal year 1999, an annual performance plan. GPRA further requires that each agency submit to the President and to the appropriate authorization and appropriations committees of Congress, an annual report on program performance for the previous fiscal year. The first of these reports, on program performance for fiscal year 1999, is due by March 31, 2000.

The EPA Strategic Plan, released in 1997, describes the programmatic and quantitative measures for improving water quality nationwide. The objectives and sub-objectives associated with Goal 2: Clean and Safe Water, of the EPA Strategic Plan apply to both states and tribes. Tribes and Intertribal Consortia, by virtue of delegated program authorities, and as recipients of EPA grant funds, play an integral part in achieving those objectives and sub-objectives. EPA will use the budget information that Tribes and Intertribal Consortia provide in grant applications as a basis for linking the Agency's actual expenditures with EPA's results-based accomplishments or outcomes.

The EPA Office of Water has developed a Water Program Indian Strategy to set program-specific objectives to meet the goal of clean and safe water in Indian country. Through this Water Program Indian Strategy, the EPA Water Program, in partnership with tribes, will identify the actions necessary to meet the objectives and sub-objectives under Goal 2, Clean and Safe Water of the EPA Strategic Plan as they relate to tribes.

## **WHAT IS THE WATER PROGRAM INDIAN STRATEGY?**

The overall goal for the Water Program Indian Strategy, Protecting Public Health and Water Resources in Indian Country (Appendix A) is to create partnerships with tribes to protect human health and aquatic ecosystems in Indian country through the development and implementation of clean water and safe drinking water programs. This overall goal of developing and implementing environmental programs to protect human health and aquatic ecosystems in Indian country can be accomplished directly through federal implementation and/or through building tribal capacity. The ultimate intent is to build comprehensive tribal environmental programs through delegation or authorization of tribal water programs under federal law. The Strategy will assist in developing a common understanding among environmental managers at the federal, state, and tribal level of the

nature of water quality problems and will outline ongoing and planned activities to address water quality program needs in Indian country.

The Strategy outlines the critical components and planned EPA implementation activities to promote and develop Indian water programs. Implementation includes assessing the extent to which projected activities are successfully achieved as well as the extent to which they contribute to meeting the Strategy's overall goals and objectives. The critical components of the Strategy include:

- Water Quality Standards
- Water Quality Monitoring
- Permit Issuance
- Total Maximum Daily Loads (TMDL)
- Ground Water and Wetlands Protection
- Nonpoint Source Control

Section 106 Tribal Grant Program grants are used to fund a wide range of water pollution control activities including: water quality planning and assessments; development of water quality standards; ambient monitoring; development of total maximum daily loads; permit issuance; ground water and wetland protection; and nonpoint source control activities (including nonpoint source assessment and management plans).

To accomplish each component of the Indian water program framework, "Performance Measures" with targets have been established on a national basis to measure progress toward meeting the goals, objectives, and sub-objectives of the EPA Strategic Plan. These are national targets, and the Strategy recognizes that variability will exist among the EPA Regions. The specific performance measures outlined in this document are designed for building water programs in Indian country. Baseline information (as of the date of the Strategy) on each performance measure is provided wherever available. "Water Program Activities," also outlined in this Strategy, are those activities designed to meet their respective performance measure targets.

The EPA Water Program believes that the activities identified in the Strategy will help improve the protection of human health and the environment in Indian country and contribute to the attainment of the EPA goal of clean and safe water. To help ensure that these activities are implemented to successful completion and that they are the correct activities to meet the Strategy's goals and objectives, oversight of the Strategy's implementation will be incorporated into the EPA Office of Water's ongoing planning, budgeting, and management processes. EPA Regions and the Office of Water will make annual commitments against and report on progress toward the Strategy's goals as part of the water program's Management Agreement process. Progress against EPA Regional and Headquarter commitments will be reviewed mid-year and at the end of the fiscal year. Based on these reviews, the EPA Water Program will identify steps needed to achieve the Strategy's goals, seek ways to obtain potential additional resources for its implementation, refine priorities through the annual commitment process, and revise the Strategy



if necessary. A standing EPA Headquarters and Regional senior management committee will be responsible for reviewing the Strategy's implementation and revising it as needed.

## **WHAT OTHER DOCUMENTS FORM A PART OF THIS GUIDANCE?**

The following documents form a part of this guidance:

- Protecting Public Health and Water Resources in Indian Country, A Strategy for EPA/Tribal Partnership, October 1998 (Appendix A)
- Establishing and Maintaining Administrative Records for EPA Determinations on Tribal Eligibility for Regulatory Programs, March 19, 1998 (Appendix B)
- Final Framework for Unified Watershed Assessments, Restoration Priorities, and Restoration Action Strategies, June 9, 1998 (Appendix C)
- Interim Guidance on Cost Sharing/Match Requirements for Tribal Section 106 Grants, January 30, 1998 (Appendix D)
- NPDES and Sewage Sludge Program Authority (Appendix E)
- OECA Final FY 2000/2001 Memorandum of Agreement Guidance (Appendix F)

## **DEFINITION OF TERMS**

Terms are defined as follows when they are used in this guidance.

Applicant. An Indian Tribe or Intertribal Consortium applying for grants.

Budget period. The period specified in a grant agreement during which the grant recipient may expend or obligate funds for the purposes specified in the agreement.

Federal Indian Reservation. All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

Federally-Recognized Tribe. Except as otherwise defined in statute or agency regulations, federally-recognized tribe means: any Indian Tribe, Band, Nation, or other organized group or community, including any Alaska Native village which is recognized by the Secretary of the United States Department of the Interior as eligible for the special services provided by the United States to Indians because of their status as Indians.

Intertribal Consortium. A partnership between two or more Tribes that is authorized by the governing bodies of those Tribes to apply for and receive assistance under Section 106.

A consortium must have adequate documentation of the existence of the partnership and the authorization to apply for and receive assistance.

Outcome. The environmental result, effect, or consequence that will occur from carrying out a water pollution control program or activity that is related to a Section 106 environmental or programmatic goal or objective. Outcomes must be quantitative, and they may not necessarily be achievable during a grant budget period.

Output. A water pollution control environmental activity or effort and associated work products related to an environmental goal or objective that will be produced or provided over a period of time or by a specified date. Outputs may be quantitative or qualitative but must be measurable during a grant budget period.

Performance Partnership Grant (PPG). A single, integrated grant made to an eligible recipient combining funds from more than one environmental grant program. A Performance Partnership Grant (PPG) may provide for administrative savings and/or programmatic flexibility to direct grant resources to where they are most needed to address public health and environmental priorities. Each Performance Partnership Grant has a single, integrated budget.

Planning Target. The amount of funds that the Regional Administrator suggests a grant applicant consider in developing its application, including the work plan, for an environmental program.

Tribal Environmental Agreement (TEA). A strategic planning document designated as a TEA and signed by the Regional Administrator and an appropriate Tribal official that sets out negotiated environmental goals, objectives, outcomes, outputs, priorities, actions to be taken, and measures of performance.

Work Plan. The document which identifies how and when an applicant will use funds from environmental program grants and is the basis for management and evaluation of performance under the grant agreement to produce specific outputs and outcomes. The work plan must be consistent with applicable statutes, regulations, and delegation or authorization agreements.

Work plan commitments. The individual work activities to be accomplished (i.e., outputs) or the results (i.e., outcomes) to be achieved that support the work plan components, as established in the grant agreement.

Work plan component. A negotiated set or group of work plan commitments established in the grant agreement. A work plan may have one or more work plan components.

# **SECTION 1**

## **SECTION 106 TRIBAL GRANT PROGRAM ELIGIBILITY**

### **WHAT ARE THE ELIGIBILITY REQUIREMENTS FOR TRIBES UNDER THE SECTION 106 TRIBAL GRANT PROGRAM?**

Section 106 of the CWA authorizes the appropriation of funds for grants to States and interstate agencies. Section 518(e) of the Clean Water Act(CWA) authorizes EPA to treat an Indian tribe as a state for purposes of Section 106, but only if:

- The Tribe is designated as a Federally recognized Tribe by the Secretary of the Department of Interior.
- The Tribe has a governing body carrying out substantial governmental duties and powers.
- The Tribe has functions to be exercised that pertain to the management and protection of water resources which are held by the Indian Tribe, held by the United States in trust for Indians, or otherwise within the borders of the Indian reservation.
- The Tribe is reasonably expected to be capable, in the Regional Administrator's judgement, of carrying out the functions to be exercised in a manner consistent with the statutory and regulatory requirements of the Section 106 Grant Program.

EPA recognizes that Tribes are sovereign nations with unique legal status, and a relationship to the federal government that is significantly different from that of States. The "Treatment-as-a-State(TAS)" requirement reflects an intent that, insofar as possible, Tribes should assume a role in implementing the environmental statutes on Tribal land comparable to the role States play on State land.

### **WHAT ARE THE ELIGIBILITY REQUIREMENTS FOR AN INTERTRIBAL CONSORTIUM?**

An Intertribal Consortium is eligible to receive grants under Section 106 if the Consortium demonstrates that each of the member Tribes authorizing the Consortium to act on its behalf is a Federally Recognized Tribe, and has met the requirements for TAS.

## **HOW ARE ELIGIBILITY DETERMINATIONS MADE?**

In determining the eligibility of a Tribe for Treatment-as-a-State(TAS) under the requirements of Section 518(e) of the CWA, Regions are to follow the requirements in the procedures delineated in Establishing and Maintaining Administrative Records for EPA Determinations on Tribal Eligibility (Appendix B). The requirements of Section 518(e) of the CWA may be satisfied as follows:

- **The Tribe is designated as a federally-recognized tribe.**

The Secretary of the Interior periodically publishes, in the Federal Register, a listing of federally-recognized Tribes which can be used to determine which Tribes meet this requirement. If a tribe has only recently been designated as “recognized”, but does not appear in the most recent Federal Register listing of recognized Tribes, the Tribe should provide copies of the appropriate documentation to EPA demonstrating recognition by the Secretary of the Department of the Interior.

- **The Tribe has a governing body carrying out substantial governmental duties and powers.**

Each application for treatment as a State must be reviewed on a case-by-case basis to determine if the Tribe exercises substantial governmental duties and powers. Examples of governmental duties and powers may include, but are not limited to: the power to tax; the power of eminent domain; and police powers (i.e. the power to provide for the public health, safety and general welfare of Tribal members). A Tribe should provide a narrative statement and appropriate documentation describing: (1) the form of Tribal government, including how their governing body is organized; (2) the essential governmental functions currently performed; and (3) the sources of authorities to perform these functions. A summary listing of the Tribe’s constitution or currently effective Tribal codes, ordinances, and/or Tribal resolutions will generally satisfy item (3). The EPA Regional Office, however, may request additional information or documentation in reviewing each “Treatment-as-a State” application.

- **The Tribe has functions to be exercised that pertain to the management and protection of water resources which are held by the Indian Tribe, held by the United States in trust for Indians, or otherwise within the borders of the Indian reservation.**

In most cases, a Tribe will have the necessary authority to administer CWA programs within reservation boundaries. However, the Tribe should submit a statement signed by the Tribal Attorney General, or equivalent official, explaining the legal basis ( including references to appropriate codes, ordinances, maps, etc.) for the Tribe’s regulatory authority over its water resources.

- **The Tribe has the capability to carry out the functions to be exercised consistent with the statutory and regulatory requirements of the Section 106 Grant Program**

A determination must be made that the Tribe is “reasonably expected to be capable” of carrying out the functions to be exercised, either currently, or based on a plan to develop the necessary capabilities in the future. The tribe should submit the following information:

- previous or potential managerial experience;
- existing environmental or public health programs administered by the Tribe;
- existing or proposed staff resources and stability/continuity of staff; and
- a summary of the Tribe’s accounting and procurement systems.

## **WHAT IS THE PURPOSE OF ELIGIBILITY DETERMINATIONS?**

The TAS qualification determination provides assurance that all Section 106 grantees are eligible to receive such grants, and that such a determination is made and documented prior to grant award. The Regional Administrator will not award Section 106 funds to a Tribe or Intertribal Consortium unless the Tribe, or each Tribe in the Consortium, is a federally-recognized Tribe, and has qualified for TAS status.

## **WHAT DOCUMENTATION IS REQUIRED TO SUPPORT ELIGIBILITY DETERMINATIONS?**

Recognizing that these determinations can be complex, and often are controversial, Regional offices are to follow the procedures outlined in Establishing and Maintaining Administrative Records for EPA Determinations on Tribal Eligibility for Regulatory Programs (Appendix B), to ensure that the technical, policy, and legal basis for EPA decisions are articulated in supporting records that are maintained in an orderly fashion. To ensure that the administrative record for EPA decisions is developed in an orderly fashion, each Region is to establish a system for creating and maintaining an official docket for each determination on Tribal eligibility to run a regulatory program. Dockets are to be in conformance with the following general requirements:

- The docket should include the Tribe/Consortium application and all supplementary material submitted by the Tribe/Consortium to support the application.
- The docket should include all correspondence between EPA and outside parties regarding the Tribe/Consortium application.

Public participation in the TAS process is important in that it provides an opportunity for varying views and ideas to be expressed and considered in the decision-making process, and it encourages public involvement in environmental issues.

## **WHAT ARE THE PUBLIC PARTICIPATION REQUIREMENTS FOR ELIGIBILITY DETERMINATIONS?**

Public participation is that part of the decision-making process through which EPA becomes aware of public attitudes by providing ample opportunity for interested and affected parties to communicate their views.

It is important to involve the public as early in the TAS planning or decision process as it is practical. Public participation requirements vary by program but often require the following: public notification; public hearings; public comment periods; and response to comments. As comments are received by EPA, a copy should be placed in the TAS docket as soon as possible. The TAS docket should include any responses to comments prepared by EPA.

## **SECTION 2**

### **SECTION 106 TRIBAL GRANT PROGRAM FUNDING**

#### **HOW ARE FUNDS APPROPRIATED UNDER SECTION 106 MADE AVAILABLE FOR TRIBES?**

A portion of the total funds appropriated for grants under Section 106 is set-aside to fund Tribal water pollution control programs. Individual Tribes do not receive allotments directly from EPA. The Section 106 set-aside funds are allocated to the EPA Regions in accordance with the Section 106 Tribal allotment formula adopted in Fiscal Year 1998. Each region has the discretion to award grants to eligible Tribes as it believes appropriate, consistent with statutory limitations, Agency regulations and guidance.

#### **WHAT IS THE SECTION 106 TRIBAL ALLOTMENT FORMULA?**

The Section 106 tribal allotment formula incorporates a base distribution plus a variable distribution: (1) The base distribution allocates up to 75% of the available funds to each of the EPA Regions based on the number of Tribes approved for Treatment-as-a-State(TAS) in each Region. Each region will receive \$60,000 per TAS Tribe as a base-level allocation. The base level allocation is based on the number of eligible Tribes in each Region as of December 31 of the year preceding the fiscal year of allocation(e.g., December 31, 1998 for FY 2000). This cut-off date allows each Region to work with its Tribes on targeting funding needs for the following fiscal year. It does not preclude a Tribe that becomes eligible after that date from being awarded a Section 106 grant. (2) Funds remaining after the base distribution will be allocated to each Region on the basis of a weighted formula. The formula considers three variables for each of the Indian reservations in the Region: population(25%), land area(25%), and water area(50%).

Each Region will provide OWM with supporting documentation for each Tribe approved for TAS, on or before the cut-off date, for inclusion in the allocation formula for the following fiscal year. Such documentation will be developed in accordance with the procedures delineated in Appendix(B), and as discussed in **Section 1, HOW ARE ELIGIBILITY DETERMINATIONS MADE?**

## **SECTION 3**

### **SECTION 106 GRANT FUNDS USES**

#### **WHAT ARE THE ELIGIBLE USES OF SECTION 106 GRANT FUNDS?**

Section 106 grant funds are intended to assist Indian Tribes and Intertribal Consortium in carrying out eligible water pollution control program activities. Section 106 grant funds may also be used to fund those activities eligible under Section 106 in support of conducting Clean Water Action Plan (CWAP) Unified Watershed Assessments (UWA), establishing UWA Restoration Priorities, and developing UWA Restoration Strategies, as approved by the Regional Administrator. Tribes receiving General Assistance Program (GAP) grant funds may complement and/or supplement, but not duplicate, their capacity building efforts with Section 106 assistance. Section 106 grant funds are eligible for inclusion in a Performance Partnership Grant (PPG). If funds remain after Tribal and Intertribal Consortia Section 106 program grants have been awarded or because no grants were awarded, the Regional Administrator may, subject to any limitations contained in appropriation acts, use all or part of such remaining funds to support direct implementation of federal programs required by law in Indian country in the absence of an acceptable Tribal program.

#### **WHAT ARE ELIGIBLE WATER POLLUTION CONTROL ACTIVITIES?**

Section 106 grants may be used to fund a wide range of water pollution control activities including: water quality planning and assessments; development of water quality standards; ambient monitoring; development of total maximum daily loads; permit issuance; ground water and wetland protection; and nonpoint source control activities (including nonpoint source assessment and management plans).

#### **WHAT IS THE CLEAN WATER ACTION PLAN?**

The Clean Water Action Plan (CWAP) charts a course toward fulfilling the original goals of the Clean Water Act – fishable, swimmable and safe waters for all Americans. A key element of the CWAP is a cooperative approach to restoring and protecting water quality in which state, federal, tribal, and local governments work with stakeholders and interested citizens to (1) identify watersheds not meeting clean water and other natural resource goals and (2) work cooperatively to focus resources and implement strategies for solving these problems. This *unified watershed assessment* approach brings together, on a watershed basis, diverse objectives in assessments being conducted by States, Tribes, Federal agencies, and others. The CWAP calls for state environmental agencies and state conservationists to jointly convene a process to create Unified Watershed Assessments (UWA). Tribal governments will take the lead on tribal lands.



## **WHAT ARE UNIFIED WATERSHED ASSESSMENTS (UWA)?**

The principles guiding the development of the Unified Watershed Assessments, restoration priorities, and restoration strategies are described in the Final Framework For Unified Watershed Assessments, Restoration Priorities, and Restoration Action Strategies(Appendix C).

All components of a watershed related to aquatic ecosystem health are considered, including the biological, physical, and chemical characteristics; protection of human health from water pollution; and enhanced stewardship of natural resources. Water quality problems are caused by both *point* and *nonpoint* sources. *Point* sources include industries and sewage treatment facilities where pollution is discharged at a discrete point, usually through a pipe. *Nonpoint sources*, which *cause* a majority of current water quality problems, include diffuse sources of pollution, including runoff from agricultural lands, animal feeding operations, residential streets, and pollutants from air depositions.

Unified Watershed Assessments, drawing on the full range of available information identify:

- watersheds needing restoration, i.e., those not meeting clean water and other natural resource goals;
- watersheds needing preventive action to sustain water quality and aquatic ecosystems; and
- pristine or sensitive watersheds located on federal lands which are in need of an extra measure of protection.

States and Tribes, working with federal agencies and others will:

- define *watershed restoration priorities* for those watershed most in need of restoration. Core elements of these restoration priorities include:
  - identifying the highest priority watersheds to be addressed through FY 2000
  - coordinating with existing restoration priorities, including CWA Section 303(d) lists and schedules for polluted waters not meeting their designated uses.
- develop and implement *watershed restoration action strategies* to restore those watersheds in most need of attention, and develop a preliminary schedule for the remaining watersheds.

## **WHAT ARE GENERAL ASSISTANCE PROGRAM (GAP) GRANTS?**

The General Assistance Program (GAP) grants are authorized through the "Indian Environmental General Assistance Program Act of 1992" (Public Law 102-497, Section 11, 42 U.S.C. 4368b, as amended. (Public Law 103-155, November 24, 1993). The GAP program is administered by the

American Indian Environmental Office (AIEO) in the Office of Water. Gap grants are limited to developmental program activities. The program provides for Tribal governments and Intertribal Consortia with general assistance for the purpose of planning, developing and establishing capability to implement environmental protection programs on Tribal lands. Capacity-building may include assistance with development of appropriate legal and administrative structures, establishing technical capability, and planning and establishing an integrated management program to be implemented through project and program-specific assistance (e.g. Section 106 grants). GAP grant agreements can be used to complement media-specific environmental program grants. GAP grant recipients are limited in that they cannot simultaneously receive on going media-specific program funding from EPA.

## **WHAT ARE PERFORMANCE PARTNERSHIP GRANTS?**

The Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104-134) authorized the award of Performance Partnership Grants (PPGs), in which a State, interstate agency, Tribe, and Tribal Consortium may choose to combine funds from two or more environmental program grants into a single grant with a single budget. In order to include funds from a Section 106 grant the Tribe or Intertribal Consortium must:

- Meet the eligibility requirements under the CWA Section 106 Grant Program
- Apply for the grant.
- Obtain the Regional Administrator's approval of the application.

A Tribe or Intertribal Consortium may use PPG funds to carry out EPA-delegated or EPA-authorized activities, such as permitting and primary enforcement responsibility under a Federal program only if the Tribe or each member of the Intertribal Consortium receives from the Regional Administrator the delegations or authorizations to conduct such activities.

If a Tribe or Intertribal Consortium proposes a PPG work plan that differs significantly from the national program guidance associated with either the source of the funds or the proposed activities, the Regional Administrator must consult with the appropriate National Program Managers before agreeing to the work plan.

The PPG cost share shall be the sum of the amounts required for each environmental program grant included in the PPG. The Regional Administrator may waive the cost share upon request of the Tribe or Intertribal Consortium, if the Tribe or Intertribal Consortium can demonstrate in writing to the satisfaction of the Regional Administrator that fiscal circumstances within the Tribe or within each Tribe that is a member of an Intertribal Consortium are constrained to such an extent that fulfilling the match requirement (either matching funds or in-kind contributions) would impose undue hardship.

## **SECTION 4**

### **SECTION 106 TRIBAL GRANT AWARDS**

#### **WHAT IS THE MAXIMUM FEDERAL SHARE FOR A SECTION 106 TRIBAL GRANT AWARD?**

The Regional Administrator may provide up to 95 percent of the approved eligible work plan costs for a Section 106 grant award to an eligible Tribe or Intertribal Consortium. Eligible work plan costs for Section 106 grant awards include costs of planning, developing, establishing, improving, or maintaining a water pollution control program. The 5 percent match requirement is set at a level that many Tribes are able to achieve. However, we recognize that some Tribes will not be able to meet the match requirement with either Federal funds authorized by statute for matching purposes or with Tribal funds. Therefore, EPA will welcome Tribal in-kind contributions toward the match as provided for in Interim Guidance for Cost Sharing/Match Requirement on the Award of Grants to Indian Tribes, January 30, 1998 (Appendix D).

Regional Administrators may increase the maximum federal share if the Tribe or Intertribal Consortium can demonstrate in writing to the satisfaction of the Regional Administrator that fiscal circumstances within the Tribe or within each Tribe that is a member of an Intertribal Consortium are constrained to such an extent that fulfilling the match requirement (either matching funds or in-kind contributions) would impose undue hardship.

#### **WHAT IS REQUIRED TO APPLY FOR A SECTION 106 GRANT AWARD?**

A complete application for a Section 106 grant award must:

- include EPA grant application form 5700-33
- include a proposed work plan
- specify the amount of funds requested.
- meet the requirements of 40 CFR Part 31, Subpart B

An applicant should submit a complete application to EPA at least 60 days before the beginning of the proposed budget period. The Regional Administrator and applicant may negotiate the length of the budget period, subject to limitations in appropriations and authorizing statutes.

## **WHAT IS REQUIRED TO APPLY FOR A PERFORMANCE PARTNERSHIP(PPG) GRANT AWARD?**

An application for a PPG must contain:

- A list of the environmental programs and the amount of funds from each program to be combined in the PPG;
- A consolidated budget;
- A consolidated work plan that addresses each program being combined in the grant and which meets the Section 106 work plan requirements.

## **WHAT IS A SECTION 106 GRANT WORK PLAN?**

The work plan is the basis for the management and evaluation of performance under the section 106 grant agreement. The work plan is negotiated between the applicant and the Regional Administrator and reflects consideration of national, regional, and Tribal environmental and programmatic needs and priorities.

In negotiating the work plan, the Regional Administrator and applicant will consider such factors as national program guidance; any regional supplemental guidance; goals, objectives, and priorities proposed by the applicant; other jointly identified needs or priorities; and the planning target. If an applicant proposes a work plan that differs significantly from the goals and objectives, priorities, or performance measures in the national program guidance associated with both the sources of the funds and the proposed activities, the Regional Administrator must consult with the appropriate National Program Manager before agreeing to the work plan. The National Program Manager may choose to define as significant any or all changes in work plan activities. A grant work plan must specify:

- the work plan components to be funded under the grant;
- the estimated work years and funding amounts for each work plan component;
- the work plan commitments for each work plan component, and a time frame for their accomplishment;
- a performance evaluation process and reporting schedule

The work plan must be consistent with applicable federal statutes, regulations, circulars, executive orders, and delegation or authorization agreements.

An applicant may use a Tribal Environmental Agreement (TEA) or a portion of the TEA as the work plan or part of the work plan for an environmental program grant if the portion of the TEA that is to serve as the grant work plan is: (1) clearly identified and distinguished from other

portions of the TEA; and (2) meets all the requirements for a work plan.

## **WHAT IS THE REQUIRED SECTION 106 GRANT PERFORMANCE EVALUATION PROCESS?**

The grant applicant and the Regional Administrator will develop a joint process for evaluating progress and accomplishments under the Section 106 grant agreement work plan.

The evaluation process must provide for:

- a discussion of accomplishments against work plan commitments
- a discussion of the cumulative effectiveness of the work performed under each of the work plan components
- a discussion of existing and potential problem areas
- suggestions for improvement, including, where feasible, schedules for making improvements.
- identification water quality problems specific to the Indian reservation.

The Region should provide for a mid-year and end-of-year review and evaluation of the grant recipient performance under the Section 106 grant agreement, with a written end-of-year evaluation report provided to the grant recipient and the Office of Wastewater Management (OWM).

## **WHAT ARE THE REQUIRED SECTION 106 GRANT REPORTING REQUIREMENTS?**

The grant agreement must require the grant recipient to report at least annually and must satisfy the requirement for annual progress reporting under 40 CFR 31.40(b). The annual report submitted by each Tribal grant recipient must include a discussion of how activities performed under the Section 106 work plan addressed water quality problems on reservation lands. The water quality problem reporting should describe the water resources on reservation lands, designated uses of water resources, nature/sources of threats to water quality and/or designated uses, a qualitative or quantitative risk assessment, and programs required to assess and/or restore water quality.

Regions will provide end-of-year evaluation reports of performance under the Section 106 grant agreement to the Tribal grant recipient and to the Office of Wastewater Management (OWM). The report should highlight the successes and/or problems the Tribe or Intertribal Consortium has encountered in meeting its grant agreement work plan commitments, as well as specify any technical assistance required to resolve identified problems. Activities that have been undertaken to develop or continue/accelerate monitoring programs should be addressed separately in the year-end report as well. This information will assist in managing the national program.

A Tribe or Intertribal Consortium receiving General Assistance Program (GAP) grant funds may

complement and/or supplement, but not duplicate their capacity building efforts with Section 106 assistance. Written evaluations for a Tribe or Intertribal Consortium who have received both Section 106 Program and GAP grant funds should include a short description of specific program activities conducted under each of the Section 106 and GAP grant agreements during the identified reporting period.

## **WHAT ARE THE LIMITATIONS ON SECTION 106 GRANT AWARDS TO TRIBES?**

The Regional Administrator will **not** award Section 106 funds or reprogram Section 106 funds to a Tribe or Intertribal Consortium unless:

- The Tribe, or each Tribe in the Consortium, has qualified for TAS status.
- The Tribe or Intertribal Consortium has demonstrated satisfactory progress in meeting negotiated work plan commitments under existing or previous Section 106 grant awards, as determined by the Regional Administrator.
- The Tribe or Intertribal Consortium reports annually on the nature of and extent of water quality problems on reservation lands under existing or previous Section 106 grant awards.
- All monitoring and analysis activities performed by the Tribe or Intertribal Consortium with Section 106 grant funds meets the applicable quality assurance and quality control requirements in 40 CFR Part 31.
- The Tribe or Intertribal Consortium has authority comparable to that in Section 504 of the CWA requiring emergency powers to restrain the discharge of pollutants endangering public health and welfare, including adequate contingency plans to implement such authority. For the purposes of the Section 504 requirements, the "comparable authority" determination could be based upon a statement from the Tribe/Consortium Attorney General (AG), or equivalent official, describing how the Tribe/Consortium can respond to a discharge of pollutants endangering public health and welfare.
- EPA has not assumed enforcement as defined in section 309(a)(2) of the Clean Water Act in the Tribe's or any Intertribal Consortium member's jurisdiction.

## **WHAT ARE THE EXCEPTIONS FOR SECTION 106 GRANT AWARDS TO TRIBES?**

The Regional Administrator may award Section 106 funds to eligible Tribes and Intertribal Consortia even if they do not monitor and compile, analyze and report water quality data as described in Section 106(e)(1) of the CWA. However, all Tribal monitoring and data analysis

activities performed by a Tribe/Consortium with Section 106 grant funds must be performed in accordance with EPA's quality assurance/quality control guidelines(See 40 CFR Part 31). To receive funds under Section 106, an eligible Tribe or Intertribal Consortium is not required to meet the maintenance of effort requirement under Section 106 (d) of the CWA, which requires States and interstate agencies to maintain annual base-level of expenditures of non-Federal funds.

## **SECTION 5**

### **PROGRAM PRIORITIES FOR SECTION 106 GRANT PROGRAM ACTIVITIES**

The program priorities for the main program activities funded by Section 106 grants are: monitoring; water quality standards; permits issuance; and enforcement and compliance assurance. Many of these activities require public notification and public participation. For example EPA/Tribes must give public notification when proposing new water quality standards, issuing permits, or establishing TMDLs. The Section 106 grant program priorities are described in more detail in the following sections.

### **WATER QUALITY MONITORING**

#### **WHAT ARE THE COMPONENTS OF A WATER QUALITY MONITORING PROGRAM?**

The following components are meant to act as general guidance for developing a monitoring strategy and work plan, and establishing a core monitoring program. While not all of these will be accomplished at one time, each is an important integral part of the process for implementing a water quality monitoring program.

- **Goals and Standards** -- Set clear goals for Tribal water quality, including development and adoption of water quality standards. Identify the management decisions that water quality will need to support.
- **Existing Information**-- Aggregate existing information pertaining to water quality and key factors affecting the quality, including land use and pollution sources. Include locational data and work towards entering this information into an electronic data management that is compatible with a Geographical Information System (GIS).
- **Quality Assurance**-- Tribes are encouraged to develop a Quality Assurance Project Plan (QAPP) that describes the quality of the information acceptable to measure progress against their goals, and procedures to be followed to ensure data quality.
- **Design** -- Develop a design for monitoring Tribal waters that will result in data needed to evaluate water quality goals and standards. Monitoring may be targeted to confirm existing information and/or fill in gaps of information. Different monitoring techniques will be used in each design according to the condition of and goals established by the Tribe for the water. Possible partners in gathering monitoring information may include Tribal, State, and Federal agencies, and private sources such as volunteer monitoring groups.



- **Data Collection** -- Tribes are encouraged to obtain training in monitoring methodologies and data collection methods in order to collect physical, chemical, and biological data; to include biological monitoring in their design; and to set up "reference conditions" to provide a baseline against which to measure the biological conditions of the water. In addition, Tribes are encouraged to record the quality assurance and quality control information about the method used, and to use comparable methods in collecting monitoring information so that the data can be shared with others.
- **Data Storage** -- Tribes are encouraged to store data and methodological information in EPA's modernized STORET water quality computer system or in a compatible Tribal system. EPA can provide training, hardware, and software to Tribes to facilitate the use of STORET.
- **Assessment** -- Analyze collected data to determine whether waters are meeting water quality standards and identify specific polluted waters and the causes and sources of pollution.
- **Data Reporting** -- Tribes are encouraged to report their assessment results in a Water Quality Assessment report as required under Section 305(b) of the CWA. The development of a 305(b) report provides a method for EPA and Congressional decision makers to assess monitoring data in a meaningful way and use the information to guide efforts to care for Tribal water resources. The Tribal information will be added to that of other States and Tribes, to provide a more complete picture of national water quality in the EPA National Water Quality Inventory Report to Congress, as required under Section 305(a) of the CWA.
- **Evaluation** -- Periodically, reevaluate the goals for and design of the Tribal monitoring program, to ensure it still meets the needs of the Tribal water managers.

## **WHAT ASSISTANCE IS AVAILABLE TO TRIBES IN DEVELOPING A WATER QUALITY MONITORING PROGRAM?**

EPA recognizes that Tribes are in various stages of developing and implementing water quality monitoring programs. Some Tribes have yet to begin the process, while others have implemented programs and are now reporting data that are used at the National level in the National Water Quality Inventory Report to Congress (305(b) Report).

In setting monitoring program priorities, Tribes are encouraged to define where their monitoring programs are at the present time and to focus on what their basic monitoring needs are in order to establish or advance their programs. EPA intends to work with Tribes as they determine their needs and to develop tools, in particular training, to assist Tribes in setting up and implementing

their monitoring programs, especially to consider their design on a watershed level. Tribes are urged to coordinate with their EPA Regional Monitoring Coordinators in the development of this monitoring strategy.

## **WATER QUALITY STANDARDS**

### **WHAT ARE WATER QUALITY STANDARDS (WQS)?**

Water Quality Standards are laws or regulations that: define the water quality goals of a water body, or water body segment, by designating the use or uses to be made of the water; set numeric or narrative criteria necessary to protect the uses; and protect water quality through antidegradation provisions. Although the CWA gives EPA an important role in determining appropriate minimum levels of protection and providing national oversight in the development of water quality standards, it also gives considerable flexibility and discretion to States and Tribes to design their own programs and establish levels of protection above the national minimum.

### **WHY ARE WATER QUALITY STANDARDS IMPORTANT?**

Water Quality Standards(WQS) serve as the foundation for the water-quality based approach to pollution control and are a fundamental component of watershed management. WQS are essential to a wide range of actions under the CWA that can protect surface water, including:

- setting and revising water quality goals for watersheds and/or individual water bodies;
- monitoring water quality to provide information for protecting water quality;
- establishing water quality-based permit limits for point source dischargers;
- calculating “total maximum daily loads” (TMDLs), “waste load allocations” for point sources of pollution, and “load allocations” for nonpoint sources of pollution; and
- ensuring through certifications under section 401 of the CWA activities requiring federal licenses or permits are consistent with water quality standards.

### **WHAT ARE THE PRIORITIES FOR THE EPA WATER QUALITY STANDARDS PROGRAM?**

The Office of Science and Technology (OST) Guidance to States, Tribes, and Regions on Priorities for the Water Quality Standards Program for FY 2000-2002 , January 27, 1999, lists the priorities by theme and implementing entity. The priorities included in the guidance are designed to strengthen the Water Quality Standards program and its use in managing water

resources on a watershed basis. The Water Quality Standards Program priorities support Clean Water Act requirements and the Clean Water Action Plan. It is expected that performance agreements between Regional Offices and States and Tribes will reflect the applicable priorities.

The FY 2000-2002 Water Quality Standards Program priorities have four organizing themes:

- Strengthen and modernize the basic structure of the water quality standards program
- Improve the process for developing, adopting, and approving water quality standards
- Strengthen the scientific basis of water quality standards
- Expand the water quality standards program's implementation in Indian Country

### **HOW ARE TRIBES AUTHORIZED TO PARTICIPATE IN THE WATER QUALITY STANDARDS PROGRAM?**

Participation in the Water Quality Standards Program (WQS) is optional on the part of Indian Tribes. However, EPA does encourage Tribes to participate in the WQS program, and has provided training, videos, and guidance documents to educate the Tribes on the program requirements and on the importance of participating in the WQS program.

To achieve authorization to conduct a water quality standards program, a Tribe must submit an application to EPA for authorization to administer the water quality standards program. The Tribe must meet the following requirements in order to obtain EPA approval for administering the water quality standards program:

- The Tribe must have a governing body which carry out substantial governmental duties and powers over a Federal Indian reservation
- The Tribe must have appropriate authority to regulate water quality within the reservation,
- The Tribe must be capable of administering the water quality standards program.

In general, most Tribes apply for eligibility for the Section 106 program before seeking approval for administering the water quality standards program. This approach enables the Tribe to obtain the necessary funding to conduct ambient monitoring to gather important information to support development of water quality standards (e.g. data to support what uses are being attained)

## **WHAT ARE AUTHORIZED TRIBES REQUIRED TO DO UNDER A WATER QUALITY STANDARDS PROGRAM?**

Once authorized to administer a Water Quality Standards (WQS) Program, a Tribe has three years to develop its initial set of water quality standards. A Tribe may also submit its adopted water quality standards to EPA for approval at the same time that the Tribe submits its application to administer a WQS Program.

The water quality standards must meet the requirements of the Clean Water Act and the Water Quality Standards Regulation (at 40 CFR 131) in order to be approved by EPA. The basic requirements Tribes are expected to adopt include use designations, water quality criteria to protect those uses, and antidegradation policy. The Tribe must also identify methods for its implementation. Although there are minimum Federal requirements that must be satisfied, there is also a significant level of flexibility for Tribes to customize their water quality standards to specific water quality problems on the reservation. For example, there is some flexibility regarding the types and specificity of designated uses that may be adopted, there is some flexibility in establishing the criteria that are applied to protect the designated uses, and there is flexibility in establishing policies that affect the implementation of the water quality standards

## **WHAT ASSISTANCE IS AVAILABLE TO TRIBES IN DEVELOPING A WATER QUALITY STANDARDS PROGRAM?**

EPA recognizes that Tribes will need technical assistance in developing and implementing these standards and that the Tribes face resource constraints. EPA recommends that authorized Tribes, for the initial three year development period, focus limited resources on those core provisions of the water quality standards program that will be most useful to the Tribal water quality program.

The Water Quality Standards Coordinators in the respective EPA Regional Offices will assist the Tribes in identifying the scope of the initial Tribal standards and will work closely with the Tribes to develop water quality standards. EPA also provides a formal training program in the development of water quality criteria and standards known as the Water Quality Standards Academy. Tribal representatives are strongly encouraged to attend this formal training. EPA also has guidance documents and additional training materials (including videos) that Tribes can obtain to assist in the development of their water quality standards and in applying for authorization to administer the water quality standards program.

## **NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)**

### **WHAT IS THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM?**

Under the National Pollutant Discharge Elimination System (NPDES), EPA works in partnership

with States and Tribes to regulate discharges into surface waters such as wetlands, lakes, rivers, estuaries, and bays. Specifically, the NPDES program focuses on control of wastewater that is released from discrete conveyances, also called *point source* discharges. Point sources include pipes, ditches, discharge from combined or storm sewers, and animal feeding operations.

## **WHAT ARE NPDES PERMITS?**

NPDES permits regulate the discharges from publicly owned treatment works (POTWs), industrial facilities, concentrated animal feeding operations, aquaculture and other point source dischargers. The NPDES program also regulates wet weather discharges such as storm water runoff from industrial activities and municipal wet weather discharges including urban storm water discharges, combined sewer overflows, and sanitary sewer overflows. An NPDES permit is typically a license to discharge pollutants into a receiving water under certain conditions. These permits impose a number of conditions on point source dischargers including: 1) technology-based effluent limits that are derived from national or state effluent limitation guidelines, 2) technology-based requirements (also known as best management practices) based on a permit writer's or permittee's best professional judgement (in the absence of an applicable effluent limitation guideline), 3) numeric effluent limits that are designed to meet water quality standards in the receiving water, and 4) other conditions that relate to regulating the discharge of pollutants such as monitoring, reporting, best management practices, etc.

## **WHAT ARE THE TYPES OF NPDES PERMITS?**

The two basic types of NPDES permits are individual and general permits. An individual permit is specifically tailored for an individual facility and is based on information like the type of activities at a facility, nature of discharge and receiving water quality. A permitting authority issues a general permit to cover multiple facilities within a specific category. A general permit covers either a number of facilities with similar discharges or all discharges within a defined geographic area such as a designated planning area, sewer district, city, county, state, state highway system, standard metropolitan area, urbanized area, or watershed. General permits offer a cost-effective option for EPA and state agencies issuing permits. While general permits may be written to cover categories of point sources having common elements, they may only be issued to discharges within a specific geographic area (i.e., designated planning area, sewer district, city, county, state, state highway system, standard metropolitan area, or urbanized area).

## **WHO IS RESPONSIBLE FOR DEVELOPING NPDES PERMITS?**

Under the Clean Water Act, Tribes can be authorized to operate their own NPDES programs. Tribes with approved NPDES programs are responsible to develop permits and ensure that municipal and industrial facilities comply with the terms of their discharge permits. Currently there are no Tribes with approval from EPA to administer all or parts of the NPDES program. EPA as the permitting authority, issues permits and has the lead implementation responsibility on Federal Indian Reservations. This responsibility includes issuing permits, conducting compliance

inspections and other compliance monitoring activities, and enforcing permit compliance. EPA evaluates permit compliance by screening self-monitoring reports submitted by the permitted facility and by onsite inspections. A facility that does not comply with the terms of its permit is subject to Federal enforcement action. Citizens can also sue under the Clean Water Act for enforcement actions against permit noncompliance.

## **HOW ARE TRIBES AUTHORIZED TO PARTICIPATE IN THE NPDES PROGRAM?**

To achieve NPDES program authorization, a Tribe must first qualify for Treatment-as-a State (TAS) status under the requirements of Section 518(e) of the CWA. A Tribe seeking NPDES Program authorization must develop enforceable regulations which are at least as stringent as EPA's "State Program Requirements" under 40 CFR Part 123. The Tribe must also demonstrate program capacity for administering the NPDES Program before authorization is granted. Once the Tribe receives authorization, it will be responsible for implementing the program, including issuing NPDES permits. The authorized Tribe will also conduct compliance and monitoring activities.

## **WHAT ASSISTANCE IS AVAILABLE TO TRIBES IN DEVELOPING A NPDES PROGRAM?**

EPA's role changes as a Tribe assumes authority for the NPDES Program:

- **Prior** to program authorization, EPA will perform the following activities:
  - issue permits (as resources are available)
  - conduct compliance and monitoring activities
  - provide necessary enforcement;
  - provide technical assistance and training to Tribes attempting to gain Treatment-as-a State status.
- **After** a Tribe has received program authorization, EPA will:
  - evaluate and oversee the Tribal NPDES Program;
  - oversee grant programs;
  - provide administrative and legal support and continued technical assistance and training.

The Office of Wastewater Management developed a handbook, NPDES and Sewage Sludge Program Authority, July 1994, Document #833-B-94-004 (Appendix E), to provide a general introduction to EPA's State program regulatory requirements. This handbook also outlines the advantages and disadvantages for Tribes in assuming these programs. For additional copies of this document you may contact the office of Water Resource Center, U.S. Environmental Protection Agency, Mail Code 4100, 401 M Street, SW, Washington, DC 2046D. (Phone: 202-260-7786]

## **ENFORCEMENT AND COMPLIANCE ASSURANCE**

### **WHAT IS THE ENFORCEMENT AND COMPLIANCE ASSURANCE PROGRAM?**

The Enforcement and Compliance Assurance program is designed to enhance the protection of the environment and human health through ensuring the compliance of the regulated community with Federal environmental statutes. To achieve that goal, the EPA Office of Enforcement and Compliance Assurance (OECA) employs an array of approaches including regulatory enforcement, compliance assistance, and compliance incentives. OECA uses a Memorandum of Agreement (MOA) process to communicate priorities and strategic directions and to negotiate commitments with Regions/States/Tribes. OECA MOA guidance will also serve as grant guidance from which to negotiate State and Tribal programs. During the second half of FY 1999, OECA will finalize its Strategic Plan for Indian Country.

### **WHAT IS THE GUIDANCE FOR ENFORCEMENT AND COMPLIANCE ASSURANCE?**

The OECA Final FY 2000/2001 Memorandum of Agreement Guidance, April 14, 1999 (Appendix F) presents a new approach to undertaking enforcement and compliance for the Agency. While recognizing the need to maintain a strong regulatory enforcement program, the guidance also recognizes, consistent with EPA's Indian Policy, the need to blend and balance both compliance and enforcement tools to meet the situation/problem. During FY 2000/2001, the regions should make every effort to increase their presence in Indian Country. The guidance emphasizes community-based protection and sector approaches. This shift encourages and supports Tribal efforts in the environmental arena by highlighting the importance of compliance assistance and capacity building when tribal facilities face difficulties in achieving or maintaining compliance with EPA regulations. EPA understands that while Tribes who have not yet received NPDES program delegation cannot at this time take formal enforcement actions, they can play a vital and important role in promoting and ensuring compliance. The Operating Principles and Priorities sections of the OECA MOA guidance will be of most interest and importance to Tribes as they develop work programs.

### **WHAT ARE THE OPERATING PRINCIPLES OF THE ENFORCEMENT AND COMPLIANCE ASSURANCE PROGRAM?**

The operating principles are:

- Reduce Risks to Environment and Human Health
- Use Multi-media Strategies
- Use the Full Range of Enforcement and Compliance Assurance Tools

- Build Partnerships and Provide Public Access
- Measure Impact
- Maintain a Robust Enforcement and Compliance Assurance Program

## **WHAT ARE THE PRIORITIES OF THE ENFORCEMENT AND COMPLIANCE ASSURANCE PROGRAM?**

The compliance and enforcement priorities are organized around three themes: community-based protection; sectors; and media-specific. Wherever possible, Regions are encouraged to develop their compliance and enforcement strategies around all three themes. The priorities related to these three themes are:

- **Community-based priorities** will focus on environmental problems or noncompliance problems associated with an ecosystem, including watersheds, airsheds, or other natural resource areas of local concern. Community-based priorities should also address those communities with environmental concerns. Community-based priorities would be nominated primarily by Regions in consultation with States and Tribes. Community-based goals should be achieved by redirecting the Agency's goals and resources in coordination with State, Tribal, local and private efforts.
- **Sector priorities** selection will be a joint effort between Headquarters, Regions, States and Tribes. High noncompliance rates, high volume TRI releases, significant presence and impacts in most Regions, and in-house expertise are among the factors which will be used in selecting specific sectors as targets for compliance and enforcement strategies.
- **Media-specific** environmental and noncompliance problems represent a final source of potential enforcement and compliance assurance priorities. The selection of these priorities has been a collaborative process by Headquarters EPA and the Regions.

## **WHAT IS THE OECA STRATEGIC PLAN FOR INDIAN COUNTRY?**

The Strategy will identify the activities that OECA and the regional enforcement programs will take to implement the enforcement and compliance assurance programs over the next five years in order to protect human health and the environment in Indian country. The strategy will emphasize compliance assistance, compliance incentives, and enforcement to carry out these goals. Priority activities that the regions should be undertaking in FY 2000/2001 include:

- **Assessing Non-Compliance**

Complete and accurate information about the universe of regulated entities and their compliance status in Indian country is necessary for OECA and the regions to



successfully protect the environment and enhance compliance. The goal is to accurately and comprehensively assess the compliance status in Indian country and to define and target priority areas of noncompliance. To help realize this goal, the regions will develop their own inventories of public and private facilities in Indian country during FY 2000/2001.

- **Compliance Assistance and Capacity Building**

OECA's compliance assistance and capacity building efforts in Indian country are designed to provide Federal facilities, non-tribally owned or operated facilities, and tribal governments that own or manage regulated facilities with information and support necessary to maintain compliance. Consistent with EPA's 1984 Indian Policy, OECA and the regions will utilize compliance assistance as the initial means of resolving non-compliance and maintaining compliance on the part of tribally-owned or managed facilities, although the Agency will take enforcement actions when necessary if compliance assistance fails to correct violations at tribally-owned facilities in a timely fashion. To help implement this approach, during FY 2000/2001, the regions will work with their tribal governments to assess both short-term and long-term tribal compliance and technical assistance training needs, using the Tribal Environmental Agreements (TEAs) or other process to develop the information.

- **Compliance Monitoring and Enforcement**

Until tribal governments are delegated authority to implement enforcement programs, EPA will take enforcement actions in Indian country under its direct implementation authority against federal facilities, privately-owned and tribally-owned facilities where warranted. In FY 2000/2001 the regions will continue to inspect identified high-priority regulated facilities located on or near Indian reservations, as those priorities are specified TEAs or in the MOA.

## **WHAT ASSISTANCE IS AVAILABLE TO TRIBES IN DEVELOPING A ENFORCEMENT AND COMPLIANCE ASSURANCE PROGRAM?**

Tribes should be encouraged to work with their Regional contacts to determine whether there are any water-related sector priorities or community-based priorities to be considered during Section 106 grant negotiations.













